

Janus and fair share fees

The organizations financing the attack on unions' ability to represent workers

Report • By Celine McNicholas, Zane Mokhiber, and Marni von Wilpert • February 21, 2018

Summary

Over the last decade, a number of cases attacking the rights of public-sector union members have been quietly working their way through the courts and, finally, up to the U.S. Supreme Court.

The most recent of these challenges is *Janus v. AFSCME Council 31*, which the U.S. Supreme Court will hear on February 26. If the court rules for Janus, it will likely have the most significant impact on workers' freedom to organize and bargain collectively in 70 years.

Janus is the third case to come before the Supreme Court in five years involving public-sector unions' ability to collect "fair share" (or "agency") fees. As this report will show, *Janus*, and the two fair share cases that preceded it, did not grow from an organic, grassroots challenge to union representation. Rather, the fair share cases are being financed by a small group of foundations with ties to the largest and most powerful corporate lobbies. These organizations and the policymakers they support have succeeded in advancing a policy agenda that weakens the bargaining power of workers. In *Janus*, these interests have focused their attack on public-sector workers—the workforce with the highest union density.

We examine the core group of organizations financing this litigation. By tracing the origins of these legal challenges, and explaining how the challenges target unions, we show that challenging fair share fees in the courts appears to be part of a broader billionaire-financed agenda to weaken unions and shift power away from ordinary workers.

What are fair share fees and why are they critical for union existence?

Collective bargaining is the process by which workers join together to negotiate with employers for better pay and safer working conditions. Under federal law, no one can be forced to join a union as a condition of employment.

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Workers who choose not to join their workplace’s union—but are covered by the union’s collective-bargaining agreement—do not pay union dues; instead they pay “fair share” fees to cover the basic costs that the union incurs representing them.¹ Because unions are legally required to represent all employees in a bargaining unit, not just union members, fair share fees are crucial to the work of collective bargaining. Stripping unions of their ability to collect these fees would encourage workers to access the benefits of union representation without paying for these benefits.² In this way, eliminating fair share fees defunds unions and goes a long way toward stripping workers of their ability to organize and bargain collectively.

How fair share fees work

Just like in any democratic institution, when a majority of employees in a bargaining unit choose to be represented by a union, the union then becomes the exclusive bargaining representative of all workers in the unit. The union has a responsibility to represent all workers in the unit, union members and employees who decide not to join the union alike, and the employer has a duty to bargain with the union over employees’ wages and working conditions. Unions may bargain to include union security agreements, which allow them to collect fair share fees (also known as “agency” fees) from employees who do not join the union but are part of the bargaining unit (employees in a bargaining unit but not union members are referred to as nonmembers). Nonmembers’ fair share fees cover the union’s expenses related to collective bargaining and contract administration, but not expenses for political or ideological advocacy. These fair share or agency fees ensure that every employee represented by the union simply pays her fair share of the cost of representation. The fees are calculated as a percentage of union dues. Fair share fees can only fund activities related to collective bargaining and contract administration and are expressly prohibited from funding the union’s political advocacy.

How fair share fees prevent “free riding”

A union is required to represent a nonmember worker who is mistreated by the employer as the nonmember pursues a costly grievance process, even if it costs the union tens of thousands of dollars. Fair share fees enable the union to charge nonmember workers for the right to access that service if they need it. Without the ability to collect fair share fees, the nonmember worker could access these expensive representation services without having paid a dime.

Workers who choose not to pay union dues also receive the higher wages and benefits that the union negotiates on behalf of its members. Eliminating fair share fees encourages “free riding”: workers paying union dues see coworkers who are paying nothing but getting the same benefits, and they decide to leave the union and stop paying union dues. Public-sector unions have worked for decades to protect the rights of the teachers, nurses, firefighters, police officers, and other public servants that communities depend on. Taking away unions’ ability to collect fair share fees—while they are nonetheless required to provide services and representation to nonmembers—would threaten the very

existence of unions by weakening their financial stability.

The possibility that workers could decide not to pay for the union benefits they receive if fair share fees are outlawed does not mean that they do not value these benefits. This proposition was explained in an amici curiae brief to assist the Supreme Court in understanding the free-rider problem at issue in *Janus v. AFSCME*, which was signed by 36 distinguished economists and professors of economics and law, including three Nobel laureates. The scholars explained that the free-rider problem is a well-established concept in economics. In particular, the brief shows it is widely accepted that if an individual chooses not to pay for a resource provided to him or her for free, it does not mean the individual does not value the resource, and that when individuals who benefit from a resource do not pay for it, the resource will be underprovided.³

For example, as the brief points out, a recent union recertification election in Iowa revealed that a majority of workers in the bargaining unit voted in favor of continuing to be represented by the union, even though most of them also opted out of paying fair share fees. A recent change in Iowa state law requires public-sector unions to hold a vote and be recertified before each new contract negotiation, and recertification requires not just a majority of those voting but a majority of all workers covered by the collective-bargaining agreement—union members and nonmembers alike. Since Iowa state law already prohibits fair share fees in public-sector unions, the nonmembers are not required to pay fair share fees, even though they are covered by and benefit from the union’s contract.⁴

In October 2017, the election results for AFSCME Iowa Council 61 revealed that 83 percent of all employees covered by the union’s collective-bargaining agreements voted in favor of recertifying the union.⁵ Only 15 percent of the workers failed to vote, and only 2 percent voted against the union. Yet a mere 29 percent of workers who are union members pay all of the costs of the union’s collective bargaining—despite the fact that the vast majority of employees agree they benefit from, and affirmatively voted for the union. The remaining 71 percent of the workers in the bargaining unit are free riders, in that they are covered by the union contract but are nonmembers and do not pay any fair share fees because Iowa’s law prohibiting fair share fees allows people to obtain the benefits without paying for them.⁶

A brief history of fair-share-fees cases before the Supreme Court

Constitutional challenges to fair share fees in the public sector involve the following argument: “Requiring the payment of fair share fees by nonmember objectors is a violation of the objectors’ First Amendment rights.” Yet the practice of collecting fair share fees has survived decades of legal challenges. More than 40 years ago, the Supreme Court unanimously affirmed in *Abood v. Detroit Board of Education* that fair share fees could be collected from public-sector workers. It was the first Supreme Court case upholding fair share fees.⁷ The court stated in *Abood* that any minor infringement of nonmember objectors’ free speech interests posed by agency fees was justified by the state’s

legitimate interest in preventing free riders from undermining a union’s ability to represent the bargaining unit. Still, anti-union organizations have continued to litigate various aspects of fair share fees including which expenses are related to collective bargaining and thus chargeable to nonmembers. These organizations have picked at the seams of *Abood* for decades in an attempt to weaken the ability of unions to collect fair share fees. However, these legal challenges have gained new momentum over the last decade as an increasingly corporate-friendly Supreme Court has signaled a willingness to overturn *Abood*.

***Abood* affirmed the constitutionality of fair share fees**

In *Abood*, the Supreme Court held that collecting fair share fees from public-sector employees to cover the costs of collective bargaining does not violate the First Amendment rights of public-sector employees. As the court explained, “Public employees are not basically different from private employees; on the whole, they have the same sort of skills, the same needs, and seek the same advantages.” Further, the court noted, “A public employee who believes that a union representing him is urging a course that is unwise as a matter of public policy is not barred from expressing his viewpoint. Besides voting in accordance with his convictions, every public employee is largely free to express his views, in public or private orally or in writing.”⁸

In fact, that same term, the Supreme Court held in *Madison School Dist. v. Wisconsin Employment Relations Comm’n* that “the First and Fourteenth Amendments protect the right of a public school teacher to oppose, at a public school board meeting, a position advanced by the teachers’ union.” The court, therefore, “recognized that the principle of exclusivity cannot constitutionally be used to muzzle a public employee who, like any other citizen, might wish to express his view about governmental decisions concerning labor relations.”⁹

However, the court in *Abood* also noted, “Equally clear is the proposition that a government may not require an individual to relinquish rights guaranteed him by the First Amendment as a condition of public employment.” Therefore, to address the plaintiffs’ concerns that their union dues were being used to support the union’s political activities with which they disagreed, the court struck a careful balance—one that has been in place for over 40 years—requiring the union to separate fair share fees used for collective bargaining from the portion of union dues used “for the expression of political views, on behalf of political candidates, or toward the advancement of other ideological causes not germane to its duties as collective-bargaining representative.”¹⁰

***Harris v. Quinn*: First strike against fair share fees**

In 2012, the first case to “pick at the seams” of *Abood* was *Knox v. SEIU*, a case

challenging the procedures by which a union notifies nonmembers of the fair share fee calculations.¹¹ While the plaintiffs in *Knox* did not directly challenge the constitutionality of fair share fees, Justice Samuel Alito's majority opinion characterized the constitutional justification for public-sector agency fees as "something of an anomaly." Many observers considered this an invitation to argue for overturning *Abood*.

The first case in which corporate-backed plaintiffs took up that invitation was *Harris v. Quinn*.¹² The case involved home care workers in Illinois. These workers were employed by the individual clients for whom they provided in-home care, but were only eligible for employment if they met the state's basic qualifications, and were paid through state Medicaid funds. As state employees for the purposes of collective bargaining, the home-care workers elected the Service Employees International Union, Healthcare Illinois and Indiana (SEIU-HII) as their exclusive bargaining representative. The union represented the workers in collective bargaining, resulting in a contract that nearly doubled their wages, provided them with health insurance, and included training and workplace safety provisions.¹³ The contract also included a security agreement that required workers, including those who chose not to become members of the union, to pay a fair share fee.

In 2010, home health care worker Pamela Harris, represented by the National Right to Work Legal Defense Foundation, sued then-Illinois Governor Pat Quinn arguing that the fair share fee arrangement violated her First Amendment rights. A federal district court found such fair share fee arrangements constitutional under "longstanding Supreme Court precedent."¹⁴ The plaintiffs appealed to the Seventh Circuit, which affirmed the district court's decision in part. The Seventh Circuit relied on the Supreme Court's longstanding precedent in *Abood* in upholding the constitutionality of fair share fee arrangements in the public sector, and determined that the only question in the case was whether home care workers were state employees.¹⁵ The court held that, given the state's control over home care workers, they were state employees and, therefore, could appropriately be required to pay a fair share fee to the union representing them in contract negotiation and administration.¹⁶

The Supreme Court heard the case in 2014. The Supreme Court in *Harris* found that the home care workers were not "full-fledged" public employees. The court reasoned that because patients/clients had supervisory authority over home health workers, the state did not sufficiently govern their employment to make them state employees. The court then considered if fair share fee arrangements covering a special class of partial-public employees "serves a compelling state interest that cannot be achieved through means significantly less restrictive of associational freedoms."¹⁷ The majority concluded that it did not and found that fair share fees violated the nonmembers' First Amendment rights. The Supreme Court did not overrule *Abood*, instead it decided that *Abood's* precedent regarding public-sector fair share fees in collective bargaining did not apply because the home care workers were not truly public employees. However, Justice Samuel Alito, again writing for the majority as he had in *Knox*, indicated his willingness to overturn *Abood* if the right case came along in the future.

***Friedrichs v. California Teachers Association:* Second strike**

In April of 2014, Rebecca Friedrichs along with nine other public school teachers, represented by the Center for Individual Rights (CIR), filed suit against the California Teachers Association in a case that directly challenged *Abood*: they argued that the public-sector union's fair share fee arrangement violated their First Amendment rights.¹⁸ They also argued that, if agency fees are allowable, the First Amendment requires that members opt in to pay dues as opposed to providing that nonmembers may opt out of paying dues.

While it is well-established that fair share fees can only fund activities related to collective bargaining and contract administration and are expressly prohibited from funding the union's political advocacy, the *Friedrichs* plaintiffs argued that public-sector collective bargaining itself involves political speech because the subjects of collective bargaining in this context (public school teacher pay, benefits, and working conditions) are matters of public concern. The plaintiffs failed to point to a specific provision of a collective-bargaining agreement that they found objectionable, but instead focused their argument on sweeping generalizations about public-sector collective-bargaining agreements. Basically, they argued that as public employees, the terms and conditions of their employment are inherently political decisions. As explained earlier, this argument is not new, it was already dealt with and disposed of 40 years ago in the Supreme Court's decision in *Abood*.¹⁹

Knowing that their arguments about the First Amendment had already been asked and answered in *Abood*, CIR filed a motion for judgment on the pleadings in favor of the union because the plaintiff's claims were "foreclosed" by *Abood*. In other words, CIR asked the court to skip calling witnesses, taking testimony, and conducting discovery and review of documents and instead rule *in favor* of the union based solely on the precedent in *Abood*.

Why would CIR ask a lower court to rule against the plaintiffs? Because its strategy was to rush the case through the lower courts and produce little by way of a factual record. The lack of a trial record deprived the union of the opportunity to introduce evidence demonstrating the importance of fair share fees to the union's ability to collectively bargain and enforce the contract. The union asked the court for the opportunity to develop a factual record in *Friedrichs*, well aware that the court in *Harris* essentially said that a union must prove that fair share fees are necessary, which involves evidence of the effect of the free-rider problem. CIR opposed that request. As the case was controlled by *Abood*, the trial court ruled on the pleadings alone, foreclosing the union from introducing information that would demonstrate the necessity of fair share fees. The plaintiffs then appealed to the Ninth Circuit, which affirmed the district court's ruling. Friedrichs then petitioned the Supreme Court for review, which it granted on June 30, 2015.

Friedrichs quickly made it to the Supreme Court. The oral argument was held on January 11, 2016. Following the oral argument, many observers predicted that the court was likely

to overturn *Abood*. However, Justice Antonin Scalia's death on February 13, 2016, left the court without the five votes necessary to overturn *Abood*. So, on March 29, 2016, the Supreme Court issued a 4-4 decision in the case. The tie decision left the door open to continue the attack on fair share fees.

Janus v. AFSCME District Council 31: Third strike

On February 9, 2015, Illinois Governor Bruce Rauner issued an **executive order** instructing all state agencies to stop enforcing fair share union contract provisions and required that all such deductions be placed into an escrow account instead of being turned over to unions representing those workers.²⁰ That same day, Governor Rauner filed suit in district court challenging the constitutionality of public-sector unions' collection of fair share fees from nonmembers. The unions moved to dismiss the case for lack of subject matter jurisdiction and standing. While those motions were pending, Mark Janus and two other state employees filed a motion to intervene in the case. On May 19, 2015, U.S. District Judge Robert Gettleman ruled that Governor Rauner did not have standing to file suit and granted Janus permission to intervene.

The plaintiffs in *Janus* are attempting to pick up where *Friedrichs* left off, and are making the same argument that was addressed over 40 years ago in *Abood*. As in other cases challenging the collection of fair share fees, the plaintiffs in *Janus* have acknowledged that they could not prevail in the district or appellate court, which are bound by the Supreme Court precedent in *Abood*. As a result, the case has been rushed through the courts. On June 6, 2017, the National Right to Work Legal Defense Foundation filed a petition for writ of certiorari in the case (a document filed by the losing party in a case asking the Supreme Court to review the decision of a lower court). The Supreme Court granted the petition on September, 28, 2017, and will hear oral arguments in the case on February 26, 2018.²¹

Who is behind the fair share cases?

Litigating a case all the way to the United States Supreme Court is expensive: years of attorneys' fees, court costs, and trial expenses add up. How is it that a few public-sector employees who seek to challenge union representation are able to shoulder these costs? The plaintiffs in *Harris*, *Friedrichs*, and *Janus* have all been represented by wealthy legal foundations, providing pro bono representation in each of these cases.

Donor public financial disclosures

The Internal Revenue Service (IRS) requires nonprofit organizations to file a federal tax form known as the 990. These forms contain detailed information on a nonprofit's finances, including how much top employees are paid, how much money they received in contributions, their assets and liabilities, and other information that help shed light on the organization's priorities.²² Nonprofit organizations generally also must document and include every donation they received, including the donor's name and address, on

Schedule B of the Form 990. However, while most of the completed Form 990 is publically available, Schedule B is exempt from this public disclosure requirement to protect the privacy of donors.²³ A sample 990 can be found as Exhibit A1 in the appendix.

However, a separate schedule of the Form 990, Schedule I, requires a nonprofit organization to list any grants distributed to other organizations, and this is made publically available upon request. Therefore, it is possible, although very time consuming, to map the portion of a specific nonprofit's revenue that came from contributions from other nonprofits by searching through all of the Schedule I's that exist. The American Bridge 21st Century Foundation uses IRS filings to track the financial ties of conservative nonprofit organizations and makes this information available online in Conservative Transparency, a searchable database of this information. The organization examines and aggregates donations, providing information on the financial backers of the largest and most powerful corporate foundations.

We used information from the Conservative Transparency database as well as data made publically available by the IRS to create a database of financial transactions of organizations involved in the cases involving a challenge to fair share fee collection. After reviewing over a thousand transactions in the database, it remains difficult to develop a clear picture of the complete financial landscape of these cases. What is clear is that a core group of foundations with ties to the largest and most powerful lobbies representing corporate interests have provided consistent financial support for the fair share fee cases.

Organizations litigating fair share fees and their donor foundations

The box below describes the main legal foundations involved in the Supreme Court litigation challenging fair share fees. In some instances, these foundations have participated in more than one case.

National Right to Work Legal Defense Foundation (NRTWLDF)

*Represented the plaintiffs in **Harris v. Quinn**, which was argued before the U.S. Supreme Court in January 2014*

Plaintiffs backed by the National Right to Work Legal Defense Foundation argued that fair share fee arrangements violated the Constitution. The NRTWLDF is the 501(c)(3) arm of the National Right to Work Committee (NRTWC), a 501(c)(4) organization. The National Right to Work Committee is financed by business and conservative interests that seek to undercut private-sector unions by lobbying states to pass laws that ban any requirements that workers pay fair share fees. NRTWLDF has received funding from many foundations including Donors Trust and Donors Capital Fund, the Lynde and Harry Bradley Foundation, the Ed Uihlein Family Foundation, Dunn's Foundation for the Advancement of Right

Thinking, and the Walton Family Foundation.²⁴

Center for Individual Rights (CIR)

*Represented the plaintiffs in **Friedrichs v. California Teachers Association**, which was argued before the U.S. Supreme Court in January 2016*

The CIR-backed plaintiffs argued that a public-sector union's ability to collect fair share fees should be unconstitutional. This case was decided 4-4 because of Justice Antonin Scalia's death halfway through the 2016 Supreme Court term. In the past, CIR was engaged primarily in litigation to limit environmental and health and safety regulations. As the organization's budget has grown, it has become involved in litigation aimed at limiting workers' rights. CIR has received funding from Dunn's Foundation for the Advancement of Right Thinking, the Sarah Scaife Foundation, and the John M. Olin Foundation. Most notably, CIR has received financial support from Donors Trust and Donors Capital Fund, which are donor-advised funds backed by Charles and David Koch (the Koch brothers), and from the Lynde and Harry Bradley Foundation.²⁵

Liberty Justice Center and NRTWLDF

*Represented the plaintiffs in **Janus v. AFSCME**, which will be argued before the U.S. Supreme Court February 26, 2018*

In this case, the plaintiffs are making the same anti-union argument that was put on hold in *Friedrichs*: that public-sector unions should not be able to cover the cost of representing and negotiating on behalf of nonmembers who benefit from the union's representation. The Liberty Justice Center (LJC) is the legal arm of an Illinois-based conservative think tank called the Illinois Policy Institute (IPI). A review of LJC and IPI's 990s provides a limited view of their financial profile, but it is clear that they survive off of the same core group of corporate-backed organizations that contribute to many political and legal fights against unions. Donors Trust, the Lynde and Harry Bradley Foundation, the Ed Uihlein Family Foundation, Dunn's Foundation for the Advancement of Right Thinking, and the Charles Koch Institute have supported the Illinois Policy Institute and Liberty Justice Center.²⁶

A closer look at the donor organizations supporting the anti-union litigants in fair-share-fee cases

The National Right to Work Legal Defense Foundation, Center for Individual Rights, and Liberty Justice Center are separate nonprofit organizations, but they share many of the same donors. The box below profiles a few of these organizations' major donors, based on data found in their 990 filings.

Donors Trust/Donors Capital Fund

Donors Trust, headquartered in Virginia, is a tax-exempt charity founded in 1999 and is connected to Donors Capital Fund. Donors Trust is a donor-advised fund, which means that contributors to the fund can recommend how the money is allocated, but do not have final say. In return, contributors receive a bigger tax write-off than they would donating money to a family foundation and they preserve their anonymity. While most of the contributors to Donors Trust are unknown, Charles G. Koch, the Richard and Helen DeVos Foundation based in Grand Rapids, Michigan, and the Lynde and Harry Bradley Foundation based in Milwaukee have reported contributions. Donors Trust contributes tens of millions of dollars annually to conservative think tanks and advocacy groups. These include The Heritage Foundation, The Federalist Society, and the National Rifle Association's Freedom Action Fund, all in Washington, D.C.²⁷

Sarah Scaife Foundation

The Sarah Scaife Foundation is the largest of three foundations that make up the Pittsburgh-based Scaife family foundations. Under the direction of the late Richard Mellon Scaife, heir to the fortune of Andrew Mellon, the Scaife foundations in the late 1960s started to direct the majority of their assets toward conservative causes. Scaife helped fund early operations of The Heritage Foundation and the Stanford, Ca., and Washington, D.C.-based Hoover Institution. The Sarah Scaife Foundation continues to support the major conservative think tanks. Other grantees of the Sarah Scaife Foundation include FreedomWorks, the tea party group backed by the circle of like-minded mega donors that make up the Koch network, the Competitive Enterprise Institute in Washington, D.C., and the Commonwealth Foundation for Public Policy Alternatives, a Pennsylvania-based think tank associated with the American Legislative Exchange Council (ALEC) and the State Policy Network.²⁸

Lynde and Harry Bradley Foundation

The Lynde and Harry Bradley Foundation was founded in 1942, and became a major organization with a national impact following the 1985 acquisition of the Allen-Bradley company by Rockwell International, a Fortune 500 manufacturing company. This inflow of cash, along with the hiring of Michael Joyce of the conservative John M. Olin Foundation, turned Bradley from a locally focused philanthropic organization in Milwaukee to the nationally focused foundation it is today, granting around \$40 million annually. Since 2011, the majority of grants from the Bradley Foundation have gone to conservative groups, conservative think tanks such as the American Enterprise Institute and The Heritage Foundation, and religious freedom groups.²⁹

Ed Uihlein Family Foundation

The Ed Uihlein Family Foundation is run by businessman Richard Uihlein, the son of Ed (Edgar) Uihlien. Richard Uihlein is an influential player in Illinois and Wisconsin state politics. He donated \$2.6 million to Illinois Gov. Bruce Rauner's 2014 campaign, and another \$2.5 million to the Unintimidated super PAC that backed Wisconsin Gov. Scott Walker's presidential campaign. The foundation also has given significant sums of money to the Illinois Policy Institute, whose legal arm, the Liberty Justice Center, is the main representative of the plaintiffs in *Janus*. The Uihlein family is also well connected to the Bradley family and the Bradley Foundation. David Uihlein Jr. served as vice chairman of the Lynde and Harry Bradley Foundation, and his father served on the board of the Allen-Bradley company.³⁰

Dunn's Foundation for the Advancement of Right Thinking

The foundation was founded by William A. Dunn in 1994 to advocate for and fund libertarian causes. William A. Dunn is the founder of Dunn Capital Management in Florida, which has over \$1 billion in assets under management, and seems to be the main source of the foundation's assets. The Dunns have given millions to the Institute for Justice, the Pacific Legal Foundation, and the Landmark Legal Foundation. Since 2000, the foundation has also given well over \$60 million to conservative groups such as the Competitive Enterprise Institute, the Cato Institute, the Mackinac Center for Public Policy, and the Reason Foundation.³¹

Table A1 in the appendix provides a somewhat more comprehensive breakdown of which entities are funding the organizations that are trying to outlaw mandatory fair share fees in the courts.

The link between anti-fair share and the broader attack on workers

Many of the organizations financing the *legal* challenges to workers' rights have also been funding legislative battles focused on limiting workers' rights.³² How do these groups benefit by limiting workers' rights? Anti-worker policies shift a greater share of economic gains to corporate players and away from ordinary workers. This is evident in the relationship between declining union membership and rising inequality. As union membership has fallen over the last few decades, the share of income going to the top 10 percent has steadily increased. When union membership was at its peak (33.4 percent in 1945) the share of income going to the top 10 percent was only 32.6 percent. In 2015, union membership was 11.1 percent, while the share of income going to the top 10 percent was 47.8 percent—the largest share going to the top 10 percent since 1917 (the earliest year data are available).³³ The erosion of collective bargaining is a core part of our nation's problems of wage stagnation and rising inequality. Workers who are not in a union have much less power to negotiate with their employers for higher pay (or more hours, or better working conditions). Further, the erosion of union coverage hurts workers who *aren't* in a union; research shows that when the share of workers who are union members falls, wages of nonunion workers are lower. For example, wages of nonunion male workers in 2013 would have been 5 percent higher (that's an additional \$2,704 in earnings for year-round workers) had union density remained at its 1979 levels.³⁴

The decline in union membership rates does not reflect a declining desire to organize in the workplace and collectively bargain. In fact, surveys show that nearly half of nonunion, nonmanagerial workers would vote for union representation if they could.³⁵ Furthermore, a majority of Americans support the right of workers to join a union.³⁶

Their support for unions notwithstanding, fewer and fewer workers successfully form a union. And, when the majority of workers elect union representation, employers often refuse to bargain with workers or delay the bargaining process. In fact, a majority of newly organized bargaining units had no collective-bargaining agreement one year after the election and more than one-third still had no contract two years after workers elected to bargain. A driving factor behind these trends is an increasingly energized and well-funded campaign against workers' rights. This campaign has occurred across all levels of government—federal, state, and local.³⁷

Conclusion

The legal attack on public-sector unions "fair share" or "agency" fees poses the greatest immediate threat to workers' meaningful participation in our democracy. If unions are prohibited from collecting fees from workers they are required to represent, they will be forced to operate with fewer and fewer resources. This will lead to reduced power—at the

bargaining table and in the political process.

In a political system dominated by moneyed interests, workers are left with little power if they do not have an effective mechanism to pool their resources. It is profoundly undemocratic to elevate the objections of a minority over the democratically determined choices of the majority of workers. This principle is what is at stake in *Janus*. The decision in this case will determine the future of effective unions, democratic decision-making in the workplace, and the preservation of good, middle-class jobs in public employment.

Appendix

Exhibit A1

EXTENDED TO AUGUST 15, 2016

Return of Organization Exempt From Income Tax
Under section 501(c), 527, or 4947(a)(1) of the Internal Revenue Code (except private foundations)

▶ Do not enter social security numbers on this form as it may be made public.
▶ Information about Form 990 and its instructions is at www.irs.gov/form990.

OMB No 1545-0047
2015
Open to Public Inspection

Form **990**
Department of the Treasury
Internal Revenue Service

A For the 2015 calendar year, or tax year beginning and ending

B Check if applicable:
 Address change
 Name change
 Initial return
 Final return/terminated
 Amended return
 Application pending

C Name of organization
 NATIONAL RIGHT TO WORK LEGAL DEFENSE
 AND EDUCATION FOUNDATION, INC.
 Doing business as SEE SCHEDULE O
 Number and street (or P.O. box if mail is not delivered to street address) Room/suite
 8001 BRADDOCK ROAD 600
 City or town, state or province, country, and ZIP or foreign postal code
 SPRINGFIELD, VA 22160

D Employer identification number
59-1588825

E Telephone number
703-321-8510

F Name and address of principal officer MARK A. MIX
SAME AS C ABOVE

G Gross receipts \$ 21,908,439

H(a) Is this a group return for subordinates? Yes No
H(b) Are all subordinates included? Yes No
 If "No," attach a list (see instructions)

I Tax-exempt status 501(c)(3) 501(c) () ◀ (insert no.) 4947(a)(1) or 527

J Website: www.NRTW.ORG

K Form of organization: Corporation Trust Association Other ▶

L Year of formation: 1975 **M State of legal domicile:** NC

Part I Summary

1 Briefly describe the organization's mission or most significant activities LEGAL AID DEPENDING WORKERS FROM ABUSES OF COMPULSORY UNIONISM

2 Check this box if the organization discontinued its operations or disposed of more than 25% of its net assets

3 Number of voting members of the governing body (Part VI, line 1a) 15

4 Number of independent voting members of the governing body (Part VI, line 1b) 13

5 Total number of individuals employed in calendar year 2015 (Part V, line 2a) 51

6 Total number of volunteers (estimate if necessary) 14

7a Total unrelated business revenue from Part VIII, column (C), line 12 <22,920.>

7b Net unrelated business taxable income from Form 990-T, line 34 <22,920.>

	Prior Year	Current Year
8 Contributions and grants (Part VIII, line 1h)	6,222,194.	5,271,794.
9 Program service revenue (Part VIII, line 2g)	358,529.	91,878.
10 Investment income (Part VIII, column (A), lines 3, 4, and 7d)	1,020,209.	530,687.
11 Other revenue (Part VIII, column (A), lines 5, 6d, 8c, 9c, 10c, and 11e)	72,714.	72,714.
12 Total revenue - add lines 8 through 11 (must equal Part VIII, column (A), line 12)	7,673,646.	5,967,073.
13 Grants and similar amounts paid (Part IX, column (A), lines 1-3)	136,500.	213,000.
14 Benefits paid to or for members (Part IX, column (A), line 4)	0.	0.
15 Salaries, other compensation, employee benefits (Part IX, column (A), lines 5-10)	3,913,669.	4,493,444.
16a Professional fundraising fees (Part IX, column (A), line 11e)	0.	0.
b Total fundraising expenses (Part IX, column (D), line 25) ▶ 251,881.		
17 Other expenses (Part IX, column (A), lines 11a-11d, 11f-24e)	2,136,339.	1,593,266.
18 Total expenses - Add lines 13-17 (must equal Part IX, column (A), line 25)	6,186,508.	6,289,710.
19 Revenue less expenses - Subtract line 18 from line 12	1,487,138.	<332,637.>
	Beginning of Current Year	End of Year
20 Total assets (Part X, line 16)	22,036,841.	20,910,465.
21 Total liabilities (Part X, line 26)	1,590,809.	1,712,605.
22 Net assets or fund balances - Subtract line 21 from line 20	20,446,032.	19,197,860.

016 Net Assets or Fund Balances

A case-by-case look at organizations behind the attack on unions' ability to represent workers

Case	Representing organization	Funding organizations
<i>Harris v. Quinn</i>	National Right to Work Legal Defense Foundation (NRTWLDF)	Freedom Partners
		The Galbraith Foundation
		Donors Trust
		The Lynde and Harry Bradley Foundation
		Walton Family Foundation
		F.M. Kirby Foundation
		Ed Uihlein Family Foundation
		Dunn's Foundation for the Advancement of Right Thinking
		Searle Freedom Trust
		Dorothy D. and Joseph A. Moller Foundation
		Donors Capital Fund
		The Randolph Foundation
		Holman Foundation, Inc.
<i>Friedrichs v. California Teachers Ass'n</i>	Center for Individual Rights	Donors Trust
		F.M. Kirby Foundation
		Sarah Scaife Foundation
		Donors Capital Fund
		The Lynde and Harry Bradley Foundation
		National Philanthropic Trust
		The Randolph Foundation
		Schwab Charitable fund
		Dunn's Foundation for the Advancement of Right Thinking
<i>Janus v. AFSCME</i>	Liberty Justice Center & NRTWLDF	Donors Capital Fund
		Donors Trust
		Mercer Family Foundation
		State Policy Network
		Ed Uihlein Family Foundation
		Barney Family Foundation

* List limited to donors who granted more than \$100,000 between 2010 and 2015

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Endnotes

1. National Labor Relations Board, “Rights We Protect,” accessed January 29, 2018.
2. Jeffery Keefe, *Eliminating Fair Share Fees and Making Public Employment “Right-to-Work” Would Increase the Pay Penalty for Working in State and Local Government*, Economic Policy Institute, October 13, 2015.
3. Brief of Amici Curiae Economists and Professors of Law and Economics in Support of Respondents, January 18, 2018.
4. The Iowa law is what is known as a “right-to-work” or RTW law. Right-to-work laws make it illegal for employees and employers to negotiate a union contract that requires all employees who benefit from the contract to pay their fair share of the costs of negotiating it. See Iowa Code Ann. § 20.15
5. Brief of Amici Curiae Economists and Professors of Law and Economics in Support of Respondents, January 18, 2018, pages 23–24.
6. Brief of Amici Curiae Economists and Professors of Law and Economics in Support of Respondents, January 18, 2018, pages 23–24.
7. *Abood v. Detroit Bd. of Ed.*, 431 U.S. 209 (1977).
8. *Abood v. Detroit Bd. of Ed.*, 431 U.S. 209 (1977).
9. *Madison School Dist. v. Wisconsin Employment Relations Comm’n*, 429 U.S. 167 (1976).
10. *Abood v. Detroit Bd. of Ed.*, 431 U.S. 209, 235 (1977). 429 U.S. 167 (1976).
11. *Knox v. Serv. Employees Int’l Union, Local 1000*, 567 U.S. 298 (2012). The issue in dispute in the *Knox* case involved the type of notice a union must give to nonmembers when it issues a special assessment or dues increase. While the parties in the *Knox* case did not directly challenge *Abood* or the constitutionality of fair share or “agency fees,” Justice Alito, on his own initiative, questioned the constitutionality of the *Abood* decision as an aside, when he wrote the majority opinion in *Knox*.
12. *Harris v. Quinn*, 134 S. Ct. 2618 (2014)
13. Kagan dissent at 2648.
14. *Harris v. Quinn*, No. 10-cv-02477, 2010 WL 4736500 at 9 (N.D. Ill. Nov. 12, 2010).
15. *Harris v. Quinn*, 656 F.3d 692 (7th Cir. 2011), aff’d in part, rev’d in part and remanded, 134 S. Ct. 2618 (2014)
16. *Harris v. Quinn*, 656 F.3d at 699 (7th Cir. 2011).
17. *Harris v. Quinn*, 134 S. Ct. 2618, 2639 (2014).
18. *Friedrichs v. California Teachers Ass’n*, 2013 WL 9825479, at *1 (C.D. Cal. Dec. 5, 2013), aff’d, No. 13-57095, 2014 WL 10076847 (9th Cir. Nov. 18, 2014).
19. See *Abood v. Detroit Bd. of Ed.*, 431 U.S. 209, 227 (1977) (“The appellants’ second argument is

that in any event collective bargaining in the public sector is inherently 'political' and thus requires a different result under the First and Fourteenth Amendments.”)

20. State of Illinois, [Executive Order 13 \(2015\)](#), February 9, 2015.
21. “[Janus v. American Federation of State, County, and Municipal Employees, Council 31](#),” SCOTUS Blog, February 16, 2018.
22. Caroline Chen, “[How to Dig Deeper into a Nonprofit’s Finances](#),” *Reveal News*, from the Center for Investigative Reporting, July 11, 2013.
23. Internal Revenue Service, “[Public Disclosure and Availability of Exempt Organizations Returns and Applications: Contributors’ Identities Not Subject to Disclosure](#),” August 4, 2017.
24. Information on NRTWLDf’s work and funding comes from Mary Bottari, “Who Is Behind the National Right to Work Committee and Its Anti-union Crusade?” Center for Media and Democracy’s PR Watch and American Bridge 21st Century Foundation, “[National Right to Work Legal Defense Foundation](#),” Conservative Transparency database, accessed August 17, 2017.
25. Information on CIR’s funding comes from American Bridge 21st Century Foundation, “[Center for Individual Rights](#)” and “[Donors Trust and Donors Capital Fund](#),” Conservative Transparency database, accessed August 17, 2017.
26. Information on funding for LJC and IPI comes from American Bridge 21st Century Foundation, “[Illinois Policy Institute](#),” Conservative Transparency database, accessed August 17, 2017.
27. Information on the relationship between Donors Trust and Donors Capital Fund and contributors to Donors Trust comes from Andy Kroll, “[Exposed: The Dark-Money ATM of the Conservative Movement](#),” *Mother Jones*, February 5, 2013, and American Bridge 21st Century Foundation, “[DonorsTrust & Donors Capital Fund](#),” Conservative Transparency database, accessed August 17, 2017.
28. The other two Scaife family foundations are the Allegheny Foundation and the Carthage Foundation. Information on Richard Mellon Scaife and the history of the Scaife foundations’ giving comes from Paul Valentine, “[Richard Mellon Scaife, Billionaire Who Funded Anti-liberal Causes, Dies at 82](#),” *The Washington Post*, July 4, 2014. Information on Sarah Scaife Foundation grantees comes from American Bridge 21st Century Foundation, “[Sarah Scaife Foundation](#),” Conservative Transparency database, accessed August 17, 2017. The American Legislative Exchange Council and the State Policy Network are both headquartered in Virginia. ALEC is a conservative nonprofit organization that drafts and promotes model legislation for state level legislators to use. SPN is a network of state level think tanks, such as the Illinois Policy Institute. Both of these corporate-funded organizations play a large role in promoting conservative legislation at the state level. See Ed Pilkington and Suzanne Goldenberg, “[State Conservative Groups Plan US-wide Assault on Education, Health and Tax](#),” *The Guardian*, US edition, December 5, 2013. Also, a 2013 report by EPI noted the role of ALEC and the State Policy Network in advancing a corporate-backed policy agenda in state legislatures to lower wages and labor standards, weaken unions, and erode workplace protections for union and nonunion workers. See Gordon Lafer, *[The Legislative Attack on American Wages and Labor Standards, 2011–2012](#)*, Economic Policy Institute, 2013.
29. See the [Lynde and Harry Bradley Foundation Grants 2011–2015](#) database published with Daniel Bice, “[Hacked Records Show Bradley Foundation Taking Its Conservative Wisconsin Model National](#),” *Milwaukee Journal Sentinel*, May 5, 2017.
30. Information on Uihlein’s influence in politics comes from Lynn Sweet, “[Mega Donor Richard](#)

- Uihlein Ramps Up Donations to Conservative Causes,” *Chicago Sun-Times*, November 27, 2017. Information on the foundation’s giving to IPI/LJC from American Bridge 21st Century Foundation, “Ed Uihlein Family Foundation,” Conservative Transparency database, accessed August 17, 2017. Information on the Uihlein family’s connection to the Bradley family and its business interests comes from the archived 2015 “Board of Directors” page on the Lynde and Harry Bradley Foundation website and “David Vogel Uihlein,” (obituary), *Milwaukee Journal Sentinel*, January 31, 2010.
31. Information on the Dunns’ giving comes from *Inside Philanthropy*, “Wall Street Donors Guide: William and Rebecca Dunn,” accessed January 29, 2018. Information on the foundation’s giving since 2010 comes from American Bridge 21st Century Foundation, “Dunn’s Foundation for the Advancement of Right Thinking,” Conservative Transparency database, accessed August 17, 2017.
32. A 2013 report by EPI listed many organizations involved in advancing a corporate-backed policy agenda in state legislatures to lower wages and labor standards, weaken unions, and erode workplace protections for union and nonunion workers. See Gordon Lafer, *The Legislative Attack on American Wages and Labor Standards, 2011–2012*, Economic Policy Institute, October 31, 2013.
33. Josh Bivens et al., *How Today’s Unions Help Working People: Giving Workers the Power to Improve Their Jobs and Unrig the Economy*, Figure A, Economic Policy Institute, June 26, 2017.
34. Jake Rosenfeld, Patrick Denice, and Jennifer Laird, *Union Decline Lowers Wages of Nonunion Workers: The Overlooked Reason Why Wages Are Stuck and Inequality Is Growing*, Economic Policy Institute, August 30, 2016.
35. In 2012, 48 percent of all nonmanagerial workers surveyed by the AFL-CIO Workers’ Rights Survey (May 2012 Hart Research Associates poll) said they would “probably” or “definitely” vote to form a labor union if an election were held tomorrow.
36. *Mixed Views of Impact of Long-Term Decline in Union Membership: Public Says Workers in Many Sectors Should Be Able to Unionize*, Pew Research Center, April 27, 2015.
37. See Bivens et al., *How Today’s Unions Help Working People*, August 24, 2017 and Gordon Lafer, *The Legislative Attack on American Wages and Labor Standards, 2011–2012*, Economic Policy Institute, 2013.